All legislation is evidence based, and I therefore refer the Committee to my evidential submission No. 24 to the Justice 1 Inquiry, and I also refer the Committee to my evidential submission to the Consultation in 2005, and which are therefore required evidence for Justice 2 Committee in this Bill, and also the required justification that I be called to give oral evidence to Justice 2.

The new independent Complaints Commission must handle both service and conduct complaints, and where the only role then played by the Law Society, would be in carrying out and implementing Scottish Solicitor Disciplinary Tribunal prosecutions against solicitors, where the new independent Complaints Commission and their investigation, had found any solicitor guilty of professional misconduct.

The Law Society, in their submission to the consultation, make much about their new improved complaints system, which although emphasising, that their process is now much quicker, the fact still remains that the Law Society favour their solicitor members in complaints, and this is evident from two complaint findings which I have received from the Society in 2005 and 2006, which, despite concluding that the solicitors “deceived” Mr. and Mrs. Mackenzie throughout a 6-year period, and which had concerned a negligence claim against another Scottish solicitor, and that, “the solicitors were dishonest”, the Law Society Committee then decided not to prosecute these solicitors before a Disciplinary Tribunal, but to only mark that finding on the solicitors record card for a period of 5 years.
Furthermore, resulting from the Scottish Legal Services Ombudsman’s associated opinion, the Law Society were then asked to re-investigate if these same solicitors had also misled their own regulator the Law Society, in 1996 (the Society normally takes a serious view of solicitors who mislead their own regulator – the Ombudsman), however, the results of that re-investigation produced in April 2006, finds that these same solicitors did indeed mislead the Law Society, but again, this also is to result in no prosecution before the Disciplinary Tribunal, only that this offence is also to be marked on the solicitors record card for a period of 5 years.

The Law Society, in acting in handling any type of complaint, be it service or conduct, have, and will continue to act, (if this Bill allows them to continue to handle conduct complaints), in the most basic and clear conflict of interest, because it is impossible for the Society to look after the interests of the profession and the public at the same time in any complaints process.

The Committee do not comprehend or understand what is involved or takes place and occurs in the Law Society complaints system and their procedures, evidencing complete bias towards the profession, and which will continue if the Society handle conduct complaints such as that proposed in the Bill.

I have multiple evidence of Law Society Committees reaching conduct decision sanctions against a solicitor, and which were not in keeping with the Society’s own complaint findings, despite Reporter’s recommendations of the seriousness of the solicitor’s acts, and that the Reporter has no hesitation in recommending prosecution before the Discipline Tribunal, however, the solicitors were then let off with a very light sanction.

Are the Committee to ignore the evidence that the Law Society sends 82 letters, of which 28 were Recorded Delivery, to a complained about solicitor, over a 15 month period, because they could receive no reply or answer to the complaint made against that solicitor, and whose address was only 7 miles away from Law Society headquarters.
The Committee must be fully aware of the Legal Defence Union, and their role and involvement in representing solicitors against whom complaints have been made, and how Law Society staff, Committee complaint decision members, complaint investigation staff, complaint Case Managers, and Reporters, themselves, some or all, also hold membership of the Legal Defence Union, and therefore, this conflict of interest alone, does not allow this Bill to pass where the Law Society continue to handle conduct complaints against solicitors.

I would warn Justice 2, that if this Bill passes, allowing the Law Society to handle conduct complaints, with the independent Complaints Commission having scrutiny and right to question and alter Law Society conduct complaint handling and decisions, that there will be so many disagreements between both bodies, that there will have to be another consultation in 4, 5 or 6 years time to finally remove the handling of conduct complaints from the Law Society.

Two separate bodies with their own interpretation of a standard which defines proven complaints, this will cause different findings about the same complaint, because service and conduct in many complaints are linked, and where the evidence in a service complaint also relates to a conduct complaint and vice versa, and if two separate bodies are to handle complaints, this will create very significant varying interpretations of evidence between the two bodies, and if this is tried, it will eventually have to be scrapped for this reason.

The Law Society, in the interests of their members, purposely investigate conduct complaints in a manner so as not to produce complaint findings and statements, which would rightfully open significant doors for the complainer’s associated professional negligence claim against the same solicitor, and this “interests of the profession” act by the Society, creates and causes serious miscarriages of justice to complainers within the results and findings of their solicitor conduct complaint.

That the £20,000 complaint fine limit proposed must not be lowered in this Bill, indeed, it should be a higher sum, quite simply, the greatest deterrent to erring solicitors, is the fear of a high financial fine, and I am confident, that if a high fine amount is legislated upon, that this will result in an immediate and very substantial drop in the amount of complaints that will be tendered to a new independent Complaints Commission.
In relation to “First steps towards giving rights of audience and rights to conduct litigation to members of other professional or other bodies”, this has been a significant and serious failure by the Scottish executive over many, many years, and where I have found it impossible to obtain legal representation to pursue negligence claims against other solicitors, despite the Chief Executive of the Law Society validating these claims in his memo, which John Swinney, MSP has brought to the Committee’s attention, which states, “the Mackenzie’s have several valid claims, they have been let down by a series of solicitors”, however, despite our failed attempts to pursue these claims ourselves, including our failures in acting as party litigants due to being unable to present these claims in court in the format legally required by the court, this would not have occurred had Sections 25 – 29 of the Law Reform Miscellaneous Act 1990, been implemented many, many years ago.

The proposed Bill includes, that the new independent Complaints Commission have an oversight role on claims on the Master Policy and Guarantee Fund, and it is my view, that this is vital and an absolute necessity, given the evidence of our claims on the Master Policy, when linked to the associated Law Society complaint findings which conclude deception and dishonesty by solicitors representing us in Master Policy claims against other solicitors.

I refer Justice 2 to our recent 5-year (2001-2006) unsuccessful search for a solicitor to act in our Master Policy claim, despite this claim having been validated by the Chief Executive of the Law Society in his memo of July 2001, stating, “the Mackenzie’s have several valid claims, they have been let down by a series of solicitors”, I therefore invite the Committee to receive oral evidence from me regarding this matter, and other Master Policy issues.